



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 12, 1992

Mr. Jeff Hankins
Legal Assistant, Program Division
Legal Services, 110-1C
Texas Department of Insurance
P. O. Box 149104
Austin, Texas 78714-9104

OR92-446

Dear Mr. Hankins:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16441.

You have received a request for information relating to a certain insurance company. Specifically, the requestor seeks:

- 1) Any and all examination reports on Midwest Life Insurance Co. prepared by Texas Insurance Department officials or contractors from 1987 through 1991.
- 2) Any memorandums or other documents prepared by Texas Department of Insurance officials concerning their communications with Louisiana Department of Insurance officials in regard to Midwest Life Insurance Co. from 1987 through 1991.
- 3) The final agreement under which Midwest Life Insurance Co. agreed to pay approximately \$5 million to the Texas Department of Insurance or another Texas state agency to settle claims left by the company.

You advise us that information responsive to the third item will be made available to the requestor. You have submitted to us for review representative samples of information responsive to items one and two, including an examination report, three

memorandums, and electronic mail printouts. You claim that the information requested in item one is excepted from required public disclosure by section 3(a)(12) and that the information requested in item two is excepted by sections 3(a)(7) and 3(a)(11) of the Open Records Act.

With regard to item one, you claim that the representative examination report is excepted from required public disclosure by section 3(a)(12) of the Open Records Act, which excepts

information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act.

Open Records Decision No. 158 (1977) at 5-6 held that insurance companies are included within the term "financial institutions" for purposes of section 3(a)(12). The document entitled "Market Conduct Examination Report" and prepared by the Texas State Board of Insurance clearly falls within the section 3(a)(12) exception and may be withheld.

With regard to the item two documents, you claim that the representative memorandums and electronic mail printouts are excepted from required public disclosure by section 3(a)(7). Open Records Decision No. 574 (1990) held that section 3(a)(7) protected from disclosure only information that revealed client confidences to an attorney or that revealed the attorney's legal advice. We have examined the documents submitted to us for review and conclude that the two memorandums dated January 31, 1991, the memorandum dated March 9, 1992, and the electronic mail printouts contain legal advice or opinion or reveal client confidences. We note that these documents also contain factual information not protected by the attorney-client privilege; however, the factual information is inextricably intertwined with information excepted by the attorney-client privilege. Accordingly, the documents may be withheld from required public disclosure in their entirety under section 3(a)(7) of the Open Records Act. Because we resolve this matter under sections 3(a)(7) and 3(a)(12), we need not address the applicability of section 3(a)(11) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR92-446.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GCK/lmm

Enclosures: Marked Documents

Ref.: ID# 16441
ID# 16505

cc: Mr. Peter Shinkle
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